

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF LOUISIANA
SHREVEPORT DIVISION

DERRICK SCOTT

CIVIL ACTION NO. 05-2024-P

versus

JUDGE WALTER

ROBERT DAVIS, ET AL.

MAGISTRATE JUDGE HORNSBY

MEMORANDUM ORDER

Derrick Scott (“Plaintiff”) is a convicted prisoner who is housed at the David Wade Correctional Center. He filed this civil action against several corrections officers based on allegations that the officers beat him severely, without cause, while he was fully restrained. Motions for summary judgment filed by the parties were denied because material facts regarding the use of force are genuinely disputed in competing affidavits.

Those factual disputes cannot be resolved on motion practice, so it appears that the jury trial requested by both parties will be necessary. A magistrate judge often conducts a hearing pursuant to 28 U.S.C. § 636(b)(1)(B) and recommends a resolution of a prisoner petition that asserts claims such as presented in this case, but that procedure is not available when the parties have demanded a jury, absent consent of all parties and referral of the case by the district judge. Otherwise, the jury trial must be conducted before a district judge.

McAfee v. Martin, 63 F.3d 436 (5th Cir. 1995).

To prepare for the jury trial, the parties must submit **Pretrial Statements**. On or before **July 20, 2007**, Plaintiff shall file his Pretrial Statement that contains (1) a list of all exhibits he intends to offer into evidence and (2) a list of the names and addresses of all witnesses he intends to call, along with a brief summary of the anticipated testimony of each witness. Plaintiff shall serve a copy of the statement, together with copies of all proposed exhibits, on counsel for the defendants, and he shall include on the original document filed with the Clerk of Court a certificate stating the date that a true and correct copy was mailed to the defendant's counsel.

On or before **August 3, 2007** the defendants shall file and serve a Pretrial Statement that contains (1) a list of all exhibits they intend to offer into evidence at the hearing and (2) a list of the names and addresses of all witnesses they intend to call, along with a summary of the anticipated testimony of each witness. Defendants shall serve a copy of the statement, together with copies of all proposed exhibits, on Plaintiff, and they shall include on the original document filed with the Clerk of Court a certificate stating the date that a true and correct copy was mailed to Plaintiff.

Failure to disclose an exhibit or witness in the pretrial statement will result in exclusion of that evidence at the hearing absent a showing of manifest injustice to the offering party that outweighs any prejudice to the opposing party.

Failure to file a pretrial statement may result in dismissal or other appropriate sanction. After the statements have been filed, the court will issue further orders regarding the trial date and related proceedings.

THUS DONE AND SIGNED, in Shreveport, Louisiana, on this the 27th day of June, 2007.



MARK L. HORNSBY
UNITED STATES MAGISTRATE JUDGE